

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1007

FINAL READING

Introduced by Baker, 44

Read first time January 10, 2006

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to government regulation; to amend sections
2 28-1241, 57-501, 60-4,138, 60-4,145, 60-4,146, 60-4,163,
3 60-6,251, 60-6,284, 75-368, 75-369, 75-369.01, 75-369.02,
4 and 75-369.03, Reissue Revised Statutes of Nebraska,
5 section 28-1213, Revised Statutes Cumulative Supplement,
6 2004, and sections 60-462.01, 60-465, 60-1306, 75-363,
7 and 75-364, Revised Statutes Supplement, 2005; to
8 change provisions relating to explosives, fireworks,
9 liquefied petroleum gas, motor vehicle operators'
10 licenses, motor vehicle equipment requirements, carrier
11 enforcement officers, and motor carriers; to define
12 terms; to prohibit certain exculpatory clauses in motor
13 carrier transportation contracts as prescribed; to

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1 eliminate certain motor carrier enforcement provisions;
2 to harmonize provisions; to repeal the original sections;
3 to outright repeal sections 75-381 and 75-382, Reissue
4 Revised Statutes of Nebraska; and to declare an
5 emergency.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1213, Revised Statutes Cumulative
2 Supplement, 2004, is amended to read:

3 28-1213 For purposes of sections 28-1213 to 28-1239,
4 unless the context otherwise requires:

5 (1) Person ~~shall mean~~ means any individual, corporation,
6 company, association, firm, partnership, limited liability company,
7 society, or joint-stock company;

8 (2) Business enterprise ~~shall mean~~ means any corporation,
9 partnership, limited liability company, company, or joint-stock
10 company;

11 (3) Explosive materials ~~shall mean~~ means explosives,
12 blasting agents, and detonators;

13 (4) Explosives ~~shall mean~~ means any chemical compound,
14 mixture, or device, the primary or common purpose of which is
15 to function by explosion, including, but not limited to, dynamite
16 and other high explosives, black powder, pellet powder, initiating
17 explosives, detonators, safety fuses, squibs, detonating cord,
18 ignited cord, igniters, display fireworks as defined in section
19 28-1241, and firecrackers or devices containing more than one
20 hundred thirty milligrams of explosive composition, but ~~shall~~
21 does not include common fireworks as defined in such section,
22 gasoline, kerosene, naphtha, turpentine, benzine, acetone, ethyl
23 ether, benzol, fixed ammunition and primers for small arms, safety
24 fuses, or matches;

25 (5) Blasting agent ~~shall mean~~ means any material or

1 mixture, intended for blasting which meets the requirements of ~~the~~
2 ~~federal Hazardous Material Regulations~~, 49 C.F.R. part 173, subpart
3 C, as such subpart existed on ~~July 20, 2002~~ the effective date of
4 this act;

5 (6) Detonator ~~shall mean~~ means any device containing
6 an initiating or primary explosive that is used for initiating
7 detonation. Excluding ignition or delay charges, a detonator
8 shall not contain more than ten grams of explosive material
9 per unit. Detonator ~~shall include~~ includes an electric detonator of
10 instantaneous or delay type, a detonator for use with safety fuses,
11 a detonating cord delay connector, and a nonelectric detonator
12 of instantaneous or delay type which consists of detonating cord,
13 shock tube, or any other replacement for electric leg wires;

14 (7) (a) Destructive devices ~~shall mean~~ means:

15 (i) Any explosive, incendiary, chemical or biological
16 poison, or poison gas (A) bomb, (B) grenade, (C) rocket having a
17 propellant charge of more than four ounces, (D) missile having an
18 explosive or incendiary charge of more than one-quarter ounce, (E)
19 mine, (F) booby trap, (G) Molotov cocktail, (H) bottle bomb, (I)
20 vessel or container intentionally caused to rupture or mechanically
21 explode by expanding pressure from any gas, acid, dry ice, or other
22 chemical mixture, or (J) any similar device, the primary or common
23 purpose of which is to explode and to be used as a weapon against
24 any person or property; or

25 (ii) Any combination of parts either designed or intended

1 for use in converting any device into a destructive device as
2 defined in subdivision (7)(a)(i) of this section from which a
3 destructive device may be readily assembled.

4 (b) The term destructive device ~~shall~~ does not include
5 (i) any device which is neither designed nor redesigned for use
6 as a weapon to be used against person or property, (ii) any
7 device, although originally designed for use as a weapon, which
8 is redesigned for use as a signaling, pyrotechnic, line-throwing,
9 safety, or similar device, (iii) surplus ordnance sold, loaned,
10 or given by the Secretary of the Army pursuant to 10 U.S.C.
11 4684(2), 4685, or 4686, as such sections existed on ~~July 20,~~
12 2002 the effective date of this act, (iv) any other device which
13 the Nebraska State Patrol finds is not likely to be used as a
14 weapon or is an antique, or (v) any other device possessed under
15 circumstances negating an intent that the device be used as a
16 weapon against any person or property;

17 (8) Federal permittee ~~shall mean~~ means any lawful user of
18 explosive materials who has obtained a federal user permit under
19 18 U.S.C. chapter 40, as such chapter existed on ~~July 20,~~ 2002 the
20 effective date of this act;

21 (9) Federal licensee ~~shall mean~~ means any importer,
22 manufacturer, or dealer in explosive materials who has obtained a
23 federal importers', manufacturers', or dealers' license under 18
24 U.S.C. chapter 40, as such chapter existed on ~~July 20,~~ 2002 the
25 effective date of this act; and

1 (10) Smokeless propellants ~~shall mean~~ means solid
2 propellants commonly called smokeless powders in the trade and used
3 in small arms ammunition.

4 Sec. 2. Section 28-1241, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 28-1241 As used in sections 28-1239.01 and 28-1241 to
7 28-1252, unless the context otherwise requires:

8 (1) Distributor ~~shall mean~~ means any person engaged in
9 the business of making sales of fireworks at wholesale in this
10 state to any person engaged in the business of making sales of
11 fireworks either as a jobber or as a retailer or both;

12 (2) Jobber ~~shall mean~~ means any person engaged in the
13 business of making sales of fireworks at wholesale to any other
14 person engaged in the business of making sales at retail;

15 (3) Retailer ~~shall mean~~ means any person engaged in the
16 business of making sales of fireworks at retail to consumers or to
17 persons other than distributors or jobbers;

18 (4) Sale ~~shall include~~ includes barter, exchange, or gift
19 or offer therefor and each such transaction made by any person,
20 whether as principal, proprietor, agent, servant, or employee;

21 (5) Fireworks ~~shall mean~~ means any composition or device
22 designed for the purpose of producing a visible or audible effect
23 by combustion, deflagration, or detonation and which meets the
24 definition of common or special fireworks set forth by the United
25 States Department of Transportation in 49 C.F.R. Title 49 of the

1 Code of Federal Regulations;

2 (6) Common fireworks ~~shall mean~~ means any small firework
3 device designed to produce visible effects by combustion and which
4 is required to comply with the construction, chemical composition,
5 and labeling regulations of the United States Consumer Product
6 Safety Commission set forth in 16 C.F.R., small devices designed to
7 produce audible effects such as whistling devices, ground devices
8 containing fifty milligrams or less of explosive composition,
9 and aerial devices and firecrackers containing one hundred thirty
10 milligrams or less of explosive composition. Class C explosives as
11 classified by the United States Department of Transportation shall
12 be considered common fireworks;

13 (7) Permissible fireworks ~~shall mean~~ means only
14 sparklers, vesuvius fountains, spray fountains, torches, color
15 fire cones, star and comet type color aerial shells without
16 explosive charge for the purpose of making a noise, lady fingers,
17 not to exceed seven-eighths of an inch in length or one-eighth
18 inch in diameter, total explosive composition not to exceed
19 fifty milligrams in weight, color wheels, and any other fireworks
20 approved under section 28-1247; and

21 (8) Display fireworks ~~shall mean~~ means those materials
22 manufactured exclusively for use in public exhibitions or displays
23 of fireworks designed to produce visible or audible effects by
24 combustion, deflagration, or detonation. Display fireworks ~~shall~~
25 ~~include~~ includes, but ~~not be~~ is not limited to, firecrackers

1 containing more than one hundred thirty milligrams of explosive
2 composition, aerial shells containing more than forty grams of
3 explosive composition, and other display pieces which exceed the
4 limits for classification as common fireworks. Class B explosives
5 as classified by the United States Department of Transportation
6 shall be considered display fireworks. Display fireworks shall
7 be considered an explosive as defined in section 28-1213 and
8 shall be subject to sections 28-1213 to 28-1239, except that
9 display fireworks may be purchased, received, and discharged by the
10 holder of an approved display permit issued pursuant to section
11 28-1239.01.

12 Sec. 3. Section 57-501, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 57-501 As used in sections 57-501 to 57-507, unless the
15 context otherwise requires:

16 (1) Person means and includes any person, firm, or
17 corporation;

18 (2) Owner means and includes (a) any person who holds
19 a written bill of sale or other instrument under which title to
20 the container was transferred to such person, (b) any person who
21 holds a paid or receipted invoice showing purchase and payment
22 of such container, (c) any person whose name, initials, mark, or
23 other identifying device has been plainly and legibly stamped or
24 otherwise shown upon the surface of such container for a period of
25 not less than one year prior to the final enactment and approval of

1 sections 57-501 to 57-507, or (d) any manufacturer of a container
2 who has not sold or transferred ownership thereof by written bill
3 of sale or otherwise;

4 (3) Liquefied petroleum gas means and includes any
5 material which is composed predominantly of hydrocarbons or
6 mixtures of the same, such as propane, propylene, butanes (normal
7 butane and isobutane), and butylenes;

8 (4) Container means any vessel, including a cylinder or
9 tank, used for storing of liquefied petroleum gas; and

10 (5) Cylinder means a container constructed in accordance
11 with the United States Department of Transportation specifications
12 in ~~49 C.F.R.~~ Title 49 of the Code of Federal Regulations as they
13 ~~exist~~ existed on September 1, 2001 the effective date of this act.

14 Sec. 4. Section 60-462.01, Revised Statutes Supplement,
15 2005, is amended to read:

16 60-462.01 For purposes of the Motor Vehicle Operator's
17 License Act, the following federal regulations are adopted as
18 Nebraska law as they existed on January 1, ~~2005~~ 2006:

19 (1) Beginning on an implementation date designated by
20 the director, the federal requirements for interstate shipment of
21 etiologic agents, 42 C.F.R. part 72; and

22 (2) The parts, subparts, and sections of ~~49 C.F.R.~~ Title
23 49 of the Code of Federal Regulations, as referenced in the Motor
24 Vehicle Operator's License Act.

25 Sec. 5. Section 60-465, Revised Statutes Supplement,

1 2005, is amended to read:

2 60-465 (1) Commercial motor vehicle means a motor vehicle
3 or combination of motor vehicles used in commerce to transport
4 passengers or property if the motor vehicle:

5 (a) Has a gross combination weight rating of eleven
6 thousand seven hundred ninety-four kilograms or more (twenty-six
7 thousand one pounds or more) inclusive of a towed unit with a
8 gross vehicle weight rating of more than four thousand five hundred
9 thirty-six kilograms (ten thousand pounds);

10 (b) Has a gross vehicle weight rating of eleven thousand
11 seven hundred ninety-four or more kilograms (twenty-six thousand
12 one pounds or more);

13 (c) Is designed to transport sixteen or more passengers,
14 including the driver; or

15 (d) Is of any size and is used in the transportation of
16 materials found to be hazardous for the purposes of the federal
17 Hazardous Materials Transportation Act and which require the motor
18 vehicle to be placarded under ~~the federal Hazardous Material~~
19 ~~Regulations~~, 49 C.F.R. part 172, subpart F.

20 (2) Commercial motor vehicle does not include (a) a farm
21 truck as defined in section 60-325 other than a combination of
22 truck-tractors and semitrailers when such farm truck is operated
23 within one hundred fifty miles of the registered owner's farm or
24 ranch, (b) any recreational vehicle as defined in section 60-347
25 or motor vehicle towing a cabin trailer as defined in sections

1 60-314 and 60-339, (c) any emergency vehicle operated by a public
2 or volunteer fire department, or (d) any motor vehicle owned or
3 operated by the United States Department of Defense or Nebraska
4 National Guard when such motor vehicle is driven by uniformed,
5 military operators performing duty in the active service of the
6 United States or this state.

7 Sec. 6. Section 60-4,138, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 60-4,138 (1) Commercial drivers' licenses and restricted
10 commercial drivers' licenses shall be issued by the Department of
11 Motor Vehicles, shall be classified as provided in subsection (2)
12 of this section, and shall bear such endorsements and restrictions
13 as are provided in subsections (3) and (4) of this section.

14 (2) Commercial motor vehicle classifications for purposes
15 of commercial drivers' licenses shall be as follows:

16 (a) Class A Combination Vehicle — Any combination of
17 motor vehicles and towed vehicles with a gross vehicle weight
18 rating of more than twenty-six thousand pounds if the gross vehicle
19 weight rating of the vehicles being towed are in excess of ten
20 thousand pounds;

21 (b) Class B Heavy Straight Vehicle — Any single
22 commercial motor vehicle with a gross vehicle weight rating of
23 twenty-six thousand one pounds or more or any such commercial motor
24 vehicle towing a vehicle with a gross vehicle weight rating not
25 exceeding ten thousand pounds; and

1 (c) Class C Small Vehicle — Any single commercial motor
2 vehicle with a gross vehicle weight rating of less than twenty-six
3 thousand one pounds or any such commercial motor vehicle towing
4 a vehicle with a gross vehicle weight rating not exceeding ten
5 thousand pounds comprising:

6 (i) Motor vehicles designed to transport sixteen or more
7 passengers, including the driver; and

8 (ii) Motor vehicles used in the transportation of
9 hazardous materials and required to be placarded pursuant to
10 section 75-364.

11 (3) The endorsements to a commercial driver's license
12 shall be as follows:

13 (a) T — Double/triple trailers;

14 (b) P — Passenger;

15 (c) N — Tank vehicle;

16 (d) H — Hazardous materials;

17 (e) X — Combination tank vehicle and hazardous
18 materials; and

19 (f) S — School bus.

20 (4) The restrictions to a commercial driver's license
21 shall be as follows:

22 (a) I — Operation of a commercial motor vehicle only in
23 intrastate commerce due to an exemption from 49 C.F.R. part 391
24 pursuant to subsection ~~(2)~~ (4) of section 75-363;

25 (b) K — Operation of a commercial motor vehicle only in

1 intrastate commerce;

2 (c) L — Operation of only a commercial motor vehicle
3 which is not equipped with air brakes;

4 (d) M — Operation of a commercial motor vehicle which is
5 not a Class A bus;

6 (e) N — Operation of a commercial motor vehicle which is
7 not a Class A or Class B bus; and

8 (f) O — Operation of a commercial motor vehicle which is
9 not a tractor-trailer combination.

10 Sec. 7. Section 60-4,145, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 60-4,145 Upon making any application pursuant to section
13 60-4,144, any applicant who operates or expects to operate a
14 commercial motor vehicle in interstate or foreign commerce and
15 who is subject to 49 C.F.R. part 391 ~~of the federal Motor~~
16 ~~Carrier Safety Regulations~~ adopted pursuant to section 75-363 shall
17 certify that the applicant meets the qualification requirements
18 of 49 C.F.R. part 391. A commercial driver's license examiner
19 may require any applicant making certification pursuant to this
20 section to demonstrate with or without the aid of corrective
21 devices sufficient powers of eyesight to enable him or her to
22 operate a commercial motor vehicle in conformance with the minimum
23 vision requirements of 49 C.F.R. part 391 ~~of the federal Motor~~
24 ~~Carrier Safety Regulations~~ adopted pursuant to section 75-363.
25 If from the examination given it appears that any applicant's

1 powers of eyesight are such that he or she cannot meet the
2 minimum vision requirements, the examiner shall allow the applicant
3 to present an ophthalmologist's or optometrist's certificate to
4 the effect that the applicant has sufficient powers of eyesight
5 for such purpose before issuing a commercial driver's license
6 to the applicant. If the examination given by the commercial
7 driver's license examiner or the ophthalmologist's or optometrist's
8 certificate indicates that the applicant must wear a corrective
9 device to meet the minimum vision requirements established by
10 this section, the applicant shall have the use of the commercial
11 driver's license issued to him or her restricted to wearing a
12 corrective device while operating a motor vehicle. An applicant
13 who has been issued a waiver or exemption by the Federal Highway
14 Motor Carrier Safety Administration from the vision requirements
15 set forth in 49 C.F.R. 391.41(b)(10) may be issued an interstate
16 commercial driver's license without meeting the vision requirements
17 set forth in 49 C.F.R. 391.41(b)(10).

18 Sec. 8. Section 60-4,146, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 60-4,146 (1) Upon making application pursuant to section
21 60-4,144, any applicant who operates or expects to operate a
22 commercial motor vehicle solely in intrastate commerce and who is
23 not subject to 49 C.F.R. part 391 of the federal Motor Carrier
24 ~~Safety Regulations~~ adopted pursuant to section 75-363 shall certify
25 that he or she is not subject to 49 C.F.R. part 391. ~~Any applicant~~

1 for a Class A commercial driver's license shall satisfy the
2 examiner that he or she is eighteen years of age or older. Any
3 applicant for a Class B or C commercial driver's license shall
4 satisfy the examiner that he or she is eligible for issuance of
5 a Class O operator's license. Any applicant making certification
6 pursuant to this section shall meet the physical and vision
7 requirements established in section 60-4,118 and shall be subject
8 to the provisions of such section relating to the Health Advisory
9 Board.

10 (2) An applicant who certifies that he or she is exempt
11 from the physical qualifications and examination requirements of
12 49 C.F.R. part 391 pursuant to subsection ~~(2)~~ (4) of section
13 75-363 shall meet the physical and vision requirements established
14 in section 60-4,118 and shall be subject to the provisions of
15 such section relating to the Health Advisory Board. A successful
16 applicant shall be issued a commercial driver's license which
17 restricts the holder to operating a commercial motor vehicle
18 solely in intrastate commerce and which also indicates that the
19 holder is exempt from the physical qualifications and examination
20 requirements prescribed by 49 C.F.R. part 391. Two years after
21 the initial issuance of such license and upon renewal, and
22 every two years following renewal, the holder of the commercial
23 driver's license shall present to the Department of Motor Vehicles
24 upon request, on a form to be prescribed by the department, a
25 statement from a physician detailing that based upon his or her

1 examination of the applicant the medical or physical condition in
2 existence prior to July 30, 1996, which would otherwise render
3 the individual not qualified under federal standards, has not
4 significantly worsened or that another nonqualifying medical or
5 physical condition has not developed.

6 (3) An applicant who certifies that he or she is not
7 subject to 49 C.F.R. part 391 under subsection (1) of this section
8 or who certifies that he or she is exempt from 49 C.F.R. part 391
9 under subsection (2) of this section shall answer the following
10 questions on the application:

11 (a) Have you within the last three months (e.g. due
12 to diabetes, epilepsy, mental illness, head injury, stroke, heart
13 condition, neurological disease, etc.):

14 (i) lost voluntary control or consciousness ... yes ...
15 no

16 (ii) experienced vertigo or multiple episodes of
17 dizziness or fainting ... yes ... no

18 (iii) experienced disorientation ... yes ... no

19 (iv) experienced seizures ... yes ... no

20 (v) experienced impairment of memory, memory loss ... yes
21 ... no Please explain:

22 (b) Do you experience any condition which affects
23 your ability to operate a motor vehicle? (e.g. due to loss
24 of, or impairment of, foot, leg, hand, arm; neurological or
25 neuromuscular disease, etc.) ... yes ... no Please explain:

1

2 (c) Since the issuance of your last driver's
3 license/permit has your health or medical condition
4 changed or worsened? ... yes ... no Please explain,
5 including how the above affects your ability to drive:
6

7 Sec. 9. Section 60-4,163, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 60-4,163 No person shall operate or be in the actual
10 physical control of a commercial motor vehicle while having any
11 alcoholic liquor in his or her body. Any person who operates or
12 is in the actual physical control of a commercial motor vehicle
13 while having any alcoholic liquor in his or her body or who refuses
14 to submit to a test or tests to determine the alcoholic content
15 of his or her blood or breath shall be placed out of service
16 for twenty-four hours, shall be subject to disqualification as
17 provided in sections 60-4,167 and 60-4,168, and shall be subject to
18 prosecution for any violation of sections 60-6,196 and 60-6,197.

19 Any order to place a person out of service for
20 twenty-four hours issued by a law enforcement officer shall be made
21 pursuant to ~~section 49 C.F.R. 392.5(c) of the federal Motor Carrier~~
22 ~~Safety Regulations~~ adopted pursuant to section 75-363. 7 ~~as such~~
23 ~~regulation existed on September 1, 2001.~~

24 Sec. 10. Section 60-6,251, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 60-6,251 (1) No person shall alter the traction surface
2 of pneumatic tires by regrooving.

3 (2) No person shall knowingly operate on any highway in
4 this state any motor vehicle on which the traction surface of any
5 pneumatic tire thereof has been regrooved. No person shall sell,
6 exchange, or offer for sale or exchange such a tire.

7 (3) This section shall not apply to regrooved commercial
8 vehicle tires which are designed and constructed in such a manner
9 that any regrooving complies with the ~~federal Motor Carrier Safety~~
10 parts, subparts, and sections of Title 49 of the Code of Federal
11 Regulations adopted pursuant to section 75-363.

12 Sec. 11. Section 60-6,284, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 60-6,284 The drawbar or other connection between any
15 two vehicles, one of which is towing or drawing the other on a
16 highway, shall not exceed fifteen feet in length from one vehicle
17 to the other, except a vehicle being towed with a connection device
18 that is an integral component of the vehicle and is designed to
19 attach to a lead unit with construction in such a manner as to
20 allow articulation at the attachment point on the chassis of the
21 towed vehicle but not to allow lateral or side-to-side movement.
22 Such connecting device shall meet the safety standards for towbar
23 failure or disconnection in the ~~federal Motor Carrier Safety~~
24 parts, subparts, and sections of Title 49 of the Code of Federal
25 Regulations adopted pursuant to section 75-363 and shall have

1 displayed at approximately the halfway point between the towing
2 vehicle and the towed vehicle on the connecting mechanism a red
3 flag or other signal or cloth not less than twelve inches both in
4 length and width that shall be at least five feet and not more than
5 ten feet from the level of the paving and shall be displayed along
6 the outside line on both sides of the towing and towed vehicles.
7 Whenever such connection consists of a chain, rope, or cable, there
8 shall be displayed upon such connection a red flag or other signal
9 or cloth not less than twelve inches both in length and width.

10 Sec. 12. Section 60-1306, Revised Statutes Supplement,
11 2005, is amended to read:

12 60-1306 The carrier enforcement officers shall have the
13 power (1) of peace officers solely for the purpose of enforcing
14 the International Fuel Tax Agreement Act and the provisions of
15 law relating to the size, weight, and load and the Motor Vehicle
16 Registration Act pertaining to buses, motor trucks, truck-tractors,
17 semitrailers, trailers, and towed vehicles, (2) when in uniform,
18 to require the driver thereof to stop and exhibit his or her
19 operator's license and registration issued for the vehicle and
20 submit to an inspection of such vehicle, the license plates,
21 the registration thereon, and licenses and permits required under
22 the motor fuel laws, (3) to make arrests upon view and without
23 warrant for any violation committed in their presence of the
24 provisions of the Motor Vehicle Operator's License Act or of any
25 other law regulating the operation of vehicles or the use of the

1 highways while in the performance of their duties referred to in
2 subdivisions (1) and (2) of this section and of sections 60-1308,
3 60-1309, and 75-363 to 75-369.07 and section 14 of this act, (4)
4 to make arrests upon view and without warrant for any violation
5 committed in their presence which is a misdemeanor or felony under
6 the laws of this state while in the performance of their duties
7 referred to in subdivisions (1) and (2) of this section and of
8 sections 60-1308, 60-1309, and 75-363 to 75-369.07 and section 14
9 of this act, and (5) to make arrests on warrant for any violation
10 which is a misdemeanor or felony under the laws of this state while
11 in the performance of their duties referred to in subdivisions
12 (1) and (2) of this section and of sections 60-1308, 60-1309, and
13 75-363 to 75-369.07 and section 14 of this act.

14 Any funds used to arm carrier enforcement officers shall
15 be paid solely from the Carrier Enforcement Cash Fund. The
16 amount of funds shall be determined by the Superintendent of
17 Law Enforcement and Public Safety.

18 Sec. 13. Section 75-363, Revised Statutes Supplement,
19 2005, is amended to read:

20 75-363 (1) The parts, subparts, and sections of ~~the~~
21 ~~federal Motor Carrier Safety Regulations, 49 C.F.R. Title 49 of~~
22 the Code of Federal Regulations listed below, as modified in this
23 section, or and any other parts, subparts, and sections referred to
24 by such parts, subparts, and sections, in existence and effective
25 as of January 1, ~~2005~~ 2006, are adopted as Nebraska law.

1 (2) Except as otherwise provided in this section, the
2 regulations shall be applicable to:

3 (a) All motor ~~all~~ carriers, drivers, and vehicles to
4 which the federal regulations apply; and

5 (b) All motor carriers transporting persons or property
6 in intrastate commerce to include:

7 (i) All ~~to~~ all vehicles of ~~intrastate~~ such motor
8 carriers with a gross vehicle weight rating, gross combination
9 weight rating, gross vehicle weight, or gross combination weight
10 over ten thousand pounds;

11 (ii) All ~~to~~ all vehicles of ~~intrastate~~ such motor
12 carriers designed or used to transport more than eight passengers,
13 including the driver, for compensation, or designed or used to
14 transport more than fifteen passengers, including the driver, and
15 not used to transport passengers for compensation;

16 (iii) All vehicles of such motor carriers transporting
17 hazardous materials required to be placarded pursuant to section
18 75-364; and

19 (iv) All ~~to~~ all intrastate motor carriers in the
20 operation of vehicles with a gross vehicle weight rating,
21 gross combination weight rating, gross vehicle weight, or gross
22 combination weight over ten thousand pounds, ~~to~~ all intrastate
23 motor carriers in the operation of vehicles designed or used
24 to transport more than eight passengers, including the driver,
25 for compensation, or designed or used to transport more than

1 ~~fifteen passengers, including the driver, and not used to transport~~
2 ~~passengers for compensation, and to all drivers of such vehicles~~
3 motor carriers if the drivers are operating a commercial motor
4 vehicle as defined in section 60-465 which requires a commercial
5 driver's license.

6 (3) The Legislature hereby adopts, as modified in this
7 section, the following parts of Title 49 of the Code of Federal
8 Regulations:

9 (a) Part 382 — Controlled Substances And Alcohol Use And
10 Testing;

11 (b) Part 385 — Safety Fitness Procedures;

12 (c) Part 387 — Minimum Levels of Financial
13 Responsibility for Motor Carriers;

14 (d) Part 390 — Federal Motor Carrier Safety Regulations;
15 General;

16 ~~(d)~~ (e) Part 391 — Qualifications Of Drivers And Longer
17 Combination Vehicle (LCV) Driver Instructors;

18 ~~(e)~~ (f) Part 392 — Driving Of Commercial Motor Vehicles;

19 ~~(f)~~ (g) Part 393 — Parts And Accessories Necessary For
20 Safe Operation;

21 ~~(g)~~ (h) Part 395 — Hours Of Service Of Drivers;

22 ~~(h)~~ (i) Part 396 — Inspection, Repair, And Maintenance;

23 ~~(i)~~ (j) Part 397 — Transportation Of Hazardous
24 Materials; Driving And Parking Rules; and

25 ~~(j)~~ (k) Part 398 — Transportation Of Migrant Workers.

1 ~~(2)~~ (4) The provisions of subpart E~~7~~ — Physical
2 Qualifications And Examinations~~7~~ of 49 C.F.R. part 391~~7~~ —
3 Qualifications Of Drivers~~7~~ And Longer Combination Vehicle (LCV)
4 Driver Instructors shall not apply to any driver subject to this
5 section who: (a) Operates a commercial motor vehicle exclusively
6 in intrastate commerce; and (b) holds, or has held, a commercial
7 driver's license issued by this state prior to July 30, 1996.

8 ~~(3)~~ (5) The regulations adopted in subsection ~~(1)~~ (3) of
9 this section shall not apply to farm trucks registered pursuant to
10 section 60-3,146 with a gross weight of sixteen tons or less or to
11 fertilizer and agricultural chemical application and distribution
12 equipment transported in units with a capacity of three thousand
13 five hundred gallons or less if the equipment is not required to
14 be placarded pursuant to section 75-364. The following parts and
15 sections of ~~the federal Motor Carrier Safety Regulations~~ 49 C.F.R.
16 chapter III shall not apply to drivers of farm trucks registered
17 pursuant to section 60-3,146 and operated solely in intrastate
18 commerce:

- 19 (a) All of part 391;
20 (b) Section 395.8 of part 395; and
21 (c) Section 396.11 of part 396.

22 ~~(4)~~ (6) For purposes of this section, intrastate motor
23 carriers shall not include any motor carrier or driver excepted
24 from ~~the federal Motor Carrier Safety Regulations~~ 49 C.F.R. chapter
25 III by section 390.3(f) of part 390 or any nonprofit entity,

1 operating solely in intrastate commerce, organized for the purpose
2 of furnishing electric service.

3 ~~(5)~~ (7) Part 395 — Hours Of Service Of Drivers shall
4 apply to motor carriers and drivers who engage in intrastate
5 commerce as defined in section ~~75-302~~ 14 of this act, except that
6 no motor carrier who engages in intrastate commerce shall permit or
7 require any driver used by it to drive nor shall any driver drive:

8 (a) More than twelve hours following eight consecutive
9 hours off duty; or

10 (b) For any period after having been on duty sixteen
11 hours following eight consecutive hours off duty.

12 No motor carrier who engages in intrastate commerce
13 shall permit or require a driver of a commercial motor vehicle,
14 regardless of the number of motor carriers using the driver's
15 services, to drive, nor shall any driver of a commercial motor
16 vehicle drive, for any period after:

17 (i) Having been on duty seventy hours in any seven
18 consecutive days if the employing motor carrier does not operate
19 every day of the week; or

20 (ii) Having been on duty eighty hours in any period of
21 eight consecutive days if the employing motor carrier operates
22 motor vehicles every day of the week.

23 ~~(6)~~ (8) Part 395 — Hours Of Service Of Drivers, as
24 adopted in subsections ~~(1)~~ (3) and ~~(5)~~ (7) of this section,
25 relating to maximum driving and on-duty time for drivers, shall

1 not apply to drivers transporting agricultural commodities or farm
2 supplies for agricultural purposes when the transportation of such
3 commodities or supplies occurs within a one-hundred-air-mile radius
4 of the source of the commodities or the distribution point for
5 the supplies when such transportation occurs during the period
6 beginning on February 15 up to and including December 15 of each
7 calendar year.

8 ~~(7) (9) Section 390.21 of part 390 - Federal Motor~~
9 ~~Carrier Safety Regulations, General, 49 C.F.R. 390.21 - Marking of~~
10 ~~commercial motor vehicles, Of Commercial Motor Vehicles~~ shall not
11 apply to farm trucks and farm truck-tractors registered pursuant to
12 section 60-3,146 and operated solely in intrastate commerce.

13 (10) 49 C.F.R. 392.9a - Operating Authority shall
14 not apply to Nebraska motor carriers operating commercial motor
15 vehicles solely in intrastate commerce.

16 Sec. 14. For purposes of sections 75-363 to 75-369.07 and
17 this section, unless the context otherwise requires:

18 (1) Accident means:

19 (a) Except as provided in subdivision (b) of this
20 subdivision, an occurrence involving a commercial motor vehicle
21 operating on a highway in interstate or intrastate commerce which
22 results in:

23 (i) A fatality;

24 (ii) Bodily injury to a person who, as a result of the
25 injury, immediately receives medical treatment away from the scene

1 of the accident; or

2 (iii) One or more motor vehicles incurring disabling
3 damage as a result of the accident, requiring the motor vehicles to
4 be transported away from the scene by a tow truck or other motor
5 vehicle.

6 (b) The term accident does not include:

7 (i) An occurrence involving only boarding and alighting
8 from a stationary motor vehicle; or

9 (ii) An occurrence involving only the loading or
10 unloading of cargo;

11 (2) Bulk packaging means a packaging, other than a vessel
12 or a barge, including a transport vehicle or freight container, in
13 which hazardous materials are loaded with no intermediate form of
14 containment and which has:

15 (a) A maximum capacity greater than one hundred nineteen
16 gallons as a receptacle for a liquid;

17 (b) A maximum net mass greater than eight hundred
18 eighty-two pounds and a maximum capacity greater than one hundred
19 nineteen gallons as a receptacle for a solid; or

20 (c) A water capacity greater than one thousand pounds as
21 a receptacle for a gas as defined in 49 C.F.R. 173.115;

22 (3) Cargo tank means a bulk packaging that:

23 (a) Is a tank intended primarily for the carriage
24 of liquids or gases and includes appurtenances, reinforcements,
25 fittings, and closures;

1 (b) Is permanently attached to or forms a part of a
2 motor vehicle or is not permanently attached to a motor vehicle
3 but which, by reason of its size, construction, or attachment to a
4 motor vehicle, is loaded or unloaded without being removed from the
5 motor vehicle; and

6 (c) Is not fabricated under a specification for
7 cylinders, intermediate bulk containers, multi-unit tank-car tanks,
8 portable tanks, or tank cars;

9 (4) Cargo tank motor vehicle means a motor vehicle with
10 one or more cargo tanks permanently attached to or forming an
11 integral part of the motor vehicle;

12 (5) Commercial enterprise means any business activity
13 relating to or based upon the production, distribution, or
14 consumption of goods or services;

15 (6) Commercial motor vehicle means any self-propelled or
16 towed motor vehicle used on a highway in interstate commerce or
17 intrastate commerce to transport passengers or property when the
18 vehicle:

19 (a) Has a gross vehicle weight rating or gross
20 combination weight rating or gross vehicle weight or gross
21 combination weight of ten thousand one pounds or more, whichever
22 is greater;

23 (b) Is designed or used to transport more than eight
24 passengers, including the driver, for compensation;

25 (c) Is designed or used to transport more than fifteen

1 passengers, including the driver, and is not used to transport
2 passengers for compensation; or

3 (d) Is used in transporting material found to be
4 hazardous and such material is transported in a quantity requiring
5 placarding pursuant to section 75-364;

6 (7) Compliance review means an onsite examination of
7 motor carrier operations, such as drivers' hours of service,
8 maintenance and inspection, driver qualification, commercial
9 driver's license requirements, financial responsibility, accidents,
10 hazardous materials, and other safety and transportation records
11 to determine whether a motor carrier meets the safety fitness
12 standard. A compliance review may be conducted in response to
13 a request to change a safety rating, to investigate potential
14 violations of safety regulations by motor carriers, or to
15 investigate complaints or other evidence of safety violations. The
16 compliance review may result in the initiation of an enforcement
17 action with penalties;

18 (8) Disabling damage means damage which precludes
19 departure of a motor vehicle from the scene of the accident in its
20 usual manner in daylight after simple repairs.

21 (a) Inclusions: Damage to motor vehicles that could have
22 been driven but would have been further damaged if so driven.

23 (b) Exclusions:

24 (i) Damage which can be remedied temporarily at the scene
25 of the accident without special tools or parts;

1 (ii) Tire disablement without other damage even if no
2 spare tire is available;

3 (iii) Headlight or taillight damage; and

4 (iv) Damage to turn signals, horn, or windshield wipers
5 which makes them inoperative;

6 (9) Driver means any person who operates any commercial
7 motor vehicle;

8 (10) Elevated temperature material means a material
9 which, when offered for transportation or transported in a bulk
10 packaging:

11 (a) Is in a liquid phase and at a temperature at or above
12 two hundred twelve degrees Fahrenheit;

13 (b) Is in a liquid phase with a flash point at or above
14 one hundred degrees Fahrenheit that is intentionally heated and
15 offered for transportation or transported at or above its flash
16 point; or

17 (c) Is in a solid phase and at a temperature at or above
18 four hundred sixty-four degrees Fahrenheit;

19 (11) Employee means any individual, other than an
20 employer, who is employed by an employer and who in the course
21 of his or her employment directly affects commercial motor
22 vehicle safety. Such term includes a driver of a commercial motor
23 vehicle, including an independent contractor while in the course
24 of operating a commercial motor vehicle, a mechanic, and a freight
25 handler. Such term does not include an employee of the United

1 States, any state, any political subdivision of a state, or any
2 agency established under a compact between states and approved by
3 the Congress of the United States who is acting within the course
4 of such employment;

5 (12) Employer means any person engaged in a business
6 affecting commerce who owns or leases a commercial motor vehicle
7 in connection with that business or assigns employees to operate
8 it. Such term does not include the United States, any state, any
9 political subdivision of a state, or an agency established under
10 a compact between states approved by the Congress of the United
11 States;

12 (13) Exempt motor carrier means a person engaged in
13 transportation exempt from economic regulation under 49 U.S.C.
14 13506. An exempt motor carrier is subject to the safety regulations
15 adopted in sections 75-363 to 75-369.07 and this section;

16 (14) Farm vehicle driver means a person who drives only
17 a commercial motor vehicle that is controlled and operated by a
18 farmer as a private motor carrier of property;

19 (15) Farmer means any person who operates a farm or is
20 directly involved in the cultivation of land, crops, or livestock
21 which:

22 (a) Are owned by that person; or

23 (b) Are under the direct control of that person;

24 (16) Fatality means any injury which results in the death
25 of a person at the time of the motor vehicle accident or within

1 thirty days after the accident;

2 (17) For-hire motor carrier means a person engaged in the
3 transportation of goods or passengers for compensation;

4 (18) Gross combination weight means the sum of the empty
5 weight of a motor vehicle plus the total weight of any load carried
6 thereon and the empty weight of the towed unit or units plus the
7 total weight of any load carried on such towed unit or units;

8 (19) Gross combination weight rating means the value
9 specified by the manufacturer as the loaded weight of a combination
10 (articulated) motor vehicle. In the absence of a value specified
11 by the manufacturer, gross combination weight rating will be
12 determined by adding either the gross vehicle weight rating or
13 gross vehicle weight of the motor vehicle plus the gross vehicle
14 weight rating or gross vehicle weight of the towed unit or units;

15 (20) Gross vehicle weight means the sum of the empty
16 weight of a motor vehicle plus the total weight of any load carried
17 thereon;

18 (21) Gross vehicle weight rating means the value
19 specified by the manufacturer as the loaded weight of a single
20 motor vehicle. In the absence of such value specified by the
21 manufacturer or the absence of any marking of such value on the
22 vehicle, the gross vehicle weight rating shall be determined from
23 the sum of the axle weight ratings of the vehicle or the sum of
24 the tire weight ratings as marked on the sidewall of the tires,
25 whichever is greater. In the absence of any tire sidewall marking,

1 the tire weight ratings shall be determined for the specified tires
2 from any of the publications of any of the organizations listed
3 in 49 C.F.R. 571.119;

4 (22) Hazardous material means a substance or material
5 that the Secretary of the United States Department of
6 Transportation has determined is capable of posing an unreasonable
7 risk to health, safety, and property when transported in commerce
8 and has designated as hazardous under 49 U.S.C. 5103. The term
9 includes hazardous substances, hazardous wastes, marine pollutants,
10 elevated temperature materials, materials designated as hazardous
11 in the Hazardous Materials Table, 49 C.F.R. 172.101, and materials
12 that meet the defining criteria for hazard classes and divisions
13 in 49 C.F.R. part 173;

14 (23) Hazardous substance means a material, including its
15 mixtures and solutions, that is listed in 49 C.F.R. 172.101,
16 Appendix A, List Of Hazardous Substances and Reportable Quantities,
17 and is in a quantity, in one package, which equals or exceeds the
18 reportable quantity listed in 49 C.F.R. 172.101, Appendix A. This
19 definition does not apply to petroleum products that are lubricants
20 or fuels or to mixtures or solutions of hazardous substances if
21 in a concentration less than that shown in the table in 49 C.F.R.
22 171.8 under the definition of hazardous substance based on the
23 reportable quantity specified for the materials listed in 49 C.F.R.
24 172.101, Appendix A;

25 (24) Hazardous waste means any material that is subject

1 to the hazardous waste manifest requirements of the United States
2 Environmental Protection Agency specified in 40 C.F.R. 262;

3 (25) Highway means the entire width between the boundary
4 limits of any street, road, avenue, boulevard, or way which is
5 publicly maintained when any part thereof is open to the use of the
6 public for purposes of vehicular travel;

7 (26) Interstate commerce means trade, traffic, or
8 transportation provided in the furtherance of a commercial
9 enterprise in the United States:

10 (a) Between a place in a state and a place outside of
11 such state, including a place outside of the United States;

12 (b) Between two places in a state through another state
13 or a place outside of the United States; or

14 (c) Between two places in a state as part of trade,
15 traffic, or transportation originating or terminating outside the
16 state or the United States;

17 (27) Intrastate commerce means any trade, traffic,
18 or transportation provided in the furtherance of a commercial
19 enterprise between any place in the State of Nebraska and any other
20 place in Nebraska and not through any other state;

21 (28) Marine pollutant means a material which is listed
22 in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B,
23 as a marine pollutant (see 49 C.F.R. 171.4 for applicability to
24 marine pollutants) and, when in a solution or mixture of one or
25 more marine pollutants, is packaged in a concentration which equals

1 or exceeds:

2 (a) Ten percent by weight of the solution or mixture for
3 materials listed in 49 C.F.R. 172.101, Appendix B; or

4 (b) One percent by weight of the solution or mixture for
5 materials that are identified as severe marine pollutants in the
6 Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B;

7 (29) Motor carrier means a for-hire motor carrier or a
8 private motor carrier. The term includes a motor carrier's agents,
9 officers, and representatives as well as employees responsible
10 for hiring, supervising, training, assigning, or dispatching of
11 drivers and employees concerned with the installation, inspection,
12 and maintenance of motor vehicle equipment or accessories. This
13 definition includes the terms employer and exempt motor carrier;

14 (30) Motor vehicle means any vehicle, truck,
15 truck-tractor, trailer, or semitrailer propelled or drawn by
16 mechanical power except (a) farm tractors, (b) vehicles which
17 run only on rails or tracks, and (c) road and general-purpose
18 construction and maintenance machinery which by design and
19 function is obviously not intended for use on a public highway,
20 including, but not limited to, motor scrapers, earthmoving
21 equipment, backhoes, trenchers, motor graders, compactors,
22 tractors, bulldozers, bucket loaders, ditchdigging apparatus,
23 asphalt spreaders, leveling graders, power shovels, and crawler
24 tractors;

25 (31) Nonbulk packaging means a packaging which has:

1 (a) A maximum capacity of one hundred nineteen gallons or
2 less as a receptacle for a liquid;

3 (b) A maximum net mass of eight hundred eighty-two pounds
4 or less and a maximum capacity of one hundred nineteen gallons or
5 less as a receptacle for a solid; or

6 (c) A water capacity of one thousand pounds or less as a
7 receptacle for a gas as defined in 49 C.F.R. 173.115;

8 (32) Out-of-service order means a declaration by an
9 authorized enforcement officer of a federal, state, Canadian,
10 Mexican, or local jurisdiction that a driver, a commercial motor
11 vehicle, or a motor carrier operation is out of service pursuant to
12 49 C.F.R. 386.72, 392.5, 395.13, or 396.9, or compatible laws or
13 the North American Uniform Out-of-Service Criteria;

14 (33) Packaging means a receptacle and any other
15 components or materials necessary for the receptacle to perform
16 its containment function in conformance with the minimum packing
17 requirements of Title 49 of the Code of Federal Regulations. For
18 radioactive materials packaging, see 49 C.F.R. 173.403;

19 (34) Person means any individual, partnership,
20 association, corporation, business trust, or any other organized
21 group of individuals;

22 (35) Principal place of business means the single
23 location designated by the motor carrier, normally its
24 headquarters, for purposes of identification. The motor carrier
25 must make records required by the regulations referred to in

1 sections 75-363 to 75-369.07 and this section available for
2 inspection at this location within forty-eight hours, Saturdays,
3 Sundays, and state or federal holidays excluded, after a request
4 has been made by an officer of the Nebraska State Patrol;

5 (36) Private motor carrier means a person who provides
6 transportation of property or passengers by commercial motor
7 vehicle and is not a for-hire motor carrier;

8 (37) Safety audit means an examination of a motor
9 carrier's operations to provide educational and technical
10 assistance on drivers' hours of service, maintenance and
11 inspection, driver qualification, commercial driver's license
12 requirements, financial responsibility, accidents, hazardous
13 materials, and other safety and transportation records to determine
14 whether a motor carrier meets the safety fitness standard. The
15 purpose of a safety audit is to gather critical safety data needed
16 to make an assessment of the carrier's safety performance and basic
17 safety management controls. Safety audits do not result in safety
18 ratings; and

19 (38) Tank means a container, consisting of a shell and
20 heads, that forms a pressure-tight vessel having openings designed
21 to accept pressure-tight fittings or closures, but excludes any
22 appurtenances, reinforcements, fittings, or closures.

23 Sec. 15. Section 75-364, Revised Statutes Supplement
24 2005, is amended to read:

25 75-364 (1) The parts, subparts, and sections of the

1 ~~federal Hazardous Material Regulations, 49 C.F.R., Title 49 of~~
2 ~~the Code of Federal Regulations~~ listed below, or any other parts,
3 ~~subparts, and sections~~ referred to by such parts, subparts, and
4 sections, in existence and effective as of January 1, ~~2005~~ 2006,
5 are adopted as part of Nebraska law and, except as provided in
6 subsections (2) and (3) of this section, shall be applicable to all
7 ~~private, common, and contract motor vehicle carriers~~ motor carriers
8 whether engaged in interstate or intrastate commerce, drivers of
9 such motor carriers, and vehicles of such motor carriers: ~~whether~~
10 ~~engaged in interstate or intrastate commerce.~~

11 (a) Part 107 — Hazardous Materials Program Procedures,
12 subpart F — Registration Of Cargo Tank And Cargo Tank Motor
13 Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers,
14 and Design Certifying Engineers;

15 (b) Part 107 — Hazardous Materials Program Procedures,
16 subpart G — Registration Of Persons Who Offer Or Transport
17 Hazardous Materials.

18 (c) Part 171 — General Information, Regulations, And
19 Definitions;

20 ~~(b)~~ (d) Part 172 — Hazardous Materials Table, Special
21 Provisions, Hazardous Materials Communications, Emergency Response
22 Information, and Training Requirements;

23 ~~(e)~~ (e) Part 173 — Shippers—General Requirements For
24 Shipments And Packagings;

25 ~~(d)~~ (f) Part 177 — Carriage By Public Highway;

1 ~~(e)~~ (g) Part 178 — Specifications For Packagings; and
2 ~~(f)~~ (h) Part 180 — Continuing Qualification And
3 Maintenance Of Packagings.

4 (2) Agricultural operations exceptions:

5 (a) The transportation of an agricultural product other
6 than a Class 2 material (Compressed Gases) as defined in 49 C.F.R.
7 171.8, over roads, other than the National System of Interstate and
8 Defense Highways, between fields of the same farm, is excepted from
9 subsection (1) of this section when:

10 (i) The agricultural product is transported by a farmer
11 who is an intrastate private motor carrier; and

12 (ii) The movement of the agricultural product conforms to
13 all other laws in effect on or before July 1, 1998, and 49 C.F.R.
14 173.24, 173.24a, and 173.24b;

15 (b) The transportation of an agricultural product to or
16 from a farm, within one hundred fifty miles of the farm, is
17 excepted from the requirements in 49 C.F.R. part 172, subparts G
18 (emergency response information) and H (training), and from the
19 specific packaging requirements of subsection (1) of this section
20 when:

21 (i) The agricultural product is transported by a farmer
22 who is an intrastate private motor carrier;

23 (ii) The total amount of agricultural product being
24 transported on a single vehicle does not exceed:

25 (A) Sixteen thousand ninety-four pounds of ammonium

1 nitrate fertilizer properly classed as Division 5.1, PGIII, in
2 a bulk packaging; or

3 (B) Five hundred two gallons for liquids or gases, or
4 five thousand seventy pounds for solids, of any other agricultural
5 product;

6 (iii) The packaging conforms to the requirements of
7 state law and is specifically authorized for transportation of the
8 agricultural product by state law and such state law has been in
9 effect on or before July 1, 1998; and

10 ~~(iv)-(A)~~ (iv) Each person having any responsibility for
11 transporting the agricultural product or preparing the agricultural
12 product for shipment has been instructed in the applicable
13 requirements of 49 C.F.R. the parts, subparts, and sections of
14 Title 49 of the Code of Federal Regulations adopted in this
15 section; and

16 ~~(B) Instruction by the Department of Agriculture required~~
17 ~~pursuant to the Pesticide Act shall be sufficient for instruction~~
18 ~~under subdivision (2)-(b)-(iv)-(A) of this section, if it has been~~
19 ~~approved for that purpose by the carrier enforcement division of~~
20 ~~the Nebraska State Patrol; and~~

21 (c) Formulated liquid agricultural products in
22 specification packagings of fifty-eight-gallon capacity or less,
23 with closures manifolded to a closed mixing system and equipped
24 with positive dry disconnect devices, may be transported by a
25 private motor carrier between a final distribution point and an

1 ultimate point of application or for loading aboard an airplane for
2 aerial application.

3 (3) Exceptions for nonspecification packagings used in
4 intrastate transportation:

5 (a) Nonspecification bulk packagings: Notwithstanding
6 requirements for specification packagings in 49 C.F.R. part 173,
7 subpart F, and 49 C.F.R. parts 178 and 180, ~~of the hazardous~~
8 ~~material regulations,~~ a nonspecification bulk packaging may be used
9 for transportation of a hazardous material by an intrastate motor
10 carrier until July 1, 2000, in accordance with subdivision (d) of
11 this subsection;

12 (b) Nonspecification cargo tanks for petroleum products:
13 Notwithstanding requirements for specification packagings in 49
14 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180,
15 a nonspecification metal tank permanently secured to a transport
16 vehicle and protected against leakage or damage in the event
17 of a turnover, having a capacity of less than three thousand
18 five hundred gallons, may be used by an intrastate motor carrier
19 for transportation of a flammable liquid petroleum product in
20 accordance with subdivision (d) of this subsection;

21 (c) Permanently secured nonbulk tanks for petroleum
22 products: Notwithstanding requirements for specification packagings
23 in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178
24 and 180, a nonspecification metal tank permanently secured to a
25 transport vehicle and protected against leakage or damage in the

1 event of a turnover, having a capacity of less than one hundred
2 nineteen gallons, may be used by an intrastate motor carrier
3 for transportation of a flammable liquid petroleum product in
4 accordance with subdivision (d) of this subsection; and

5 (d) Additional requirements: A packaging used pursuant to
6 subdivision (a), (b), or (c) of this subsection must:

7 (i) Be operated by an intrastate motor carrier and in use
8 as a packaging for hazardous material before July 1, 1998;

9 (ii) Be operated in conformance with the requirements of
10 the State of Nebraska;

11 (iii) Be specifically authorized by state law in effect
12 before July 1, 1998, for use as a packaging for the hazardous
13 material being transported and by 49 C.F.R. 173.24, 173.24a, and
14 173.24b;

15 (iv) Be offered for transportation and transported in
16 conformance with all other applicable requirements of the hazardous
17 material regulations;

18 (v) Not be used to transport a flammable cryogenic
19 liquid, hazardous substance, hazardous waste, or marine pollutant
20 as defined in 49 C.F.R. 171.8; and

21 (vi) On and after July 1, 2000, for a tank authorized
22 under subdivision (b) or (c) of this subsection, conform to
23 all requirements in 49 C.F.R. part 180, except for 49 C.F.R.
24 180.405(g) ~~of the hazardous material regulations~~, in the same
25 manner as required for a United States Department of Transportation

1 specification MC306 cargo tank motor vehicle.

2 (4) For purposes of this section:

3 (a) Agricultural product means a hazardous material,
4 other than a hazardous waste, whose end use directly supports
5 the production of an agricultural commodity, including, but not
6 limited to, a fertilizer, pesticide, soil amendment, or fuel. An
7 agricultural product is limited to a material in Class 3 (Flammable
8 Liquids), Class 8 (Corrosives), or Class 9 (Miscellaneous),
9 Division 2.1 (Flammable Gas), ~~Class~~ Division 2.2 (Nonflammable
10 Gas), ~~Class~~ Division 5.1 (Oxidizers), or ~~Class~~ Division 6.1
11 (Poisons), or an ORM-D material (Consumer Commodity), as defined
12 in 49 C.F.R. 171.8;

13 (b) Bulk package means a packaging, including a transport
14 vehicle or freight container, in which hazardous materials are
15 loaded with no other intermediate form of containment and which
16 has:

17 (i) A maximum capacity greater than one hundred nineteen
18 gallons as a receptacle for a liquid;

19 (ii) A maximum net mass greater than eight hundred
20 eighty-two pounds and a maximum capacity greater than one hundred
21 nineteen gallons as a receptacle for a solid; or

22 (iii) A water capacity greater than one thousand pounds
23 as a receptacle for a gas, pursuant to standards set forth as
24 defined in 49 C.F.R. 173.315 173.115;

25 (c) Farmer means a person engaged in the production or

1 raising of crops, poultry, or livestock; and

2 (d) Private motor carrier means a person or persons
3 engaged in the transportation of persons or product while in
4 commerce, but not for hire.

5 Sec. 16. Section 75-368, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 75-368 (1) The Nebraska State Patrol or the carrier
8 enforcement division may adopt and promulgate rules and regulations
9 as are necessary to carry out and enforce sections 75-363 to
10 75-369.07 and section 14 of this act.

11 (2) The rules and regulations utilized by the Public
12 Service Commission to administer any function or duty transferred
13 to the Division of Motor Carrier Services on January 1, 1997, shall
14 be administered as if adopted by the Division of Motor Carrier
15 Services and shall remain effective until repealed, amended,
16 modified, or reenacted by the Division of Motor Carrier Services.

17 Sec. 17. Section 75-369, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 75-369 The Nebraska State Patrol shall provide each
20 county treasurer and the Department of Motor Vehicles with copies
21 of a declaration which states that the motor carrier safety
22 regulations in sections 75-363 to 75-369.07 and section 14 of this
23 act have been enacted into state law. The declaration shall be
24 distributed by the county treasurers and the Department of Motor
25 Vehicles to each applicant for registration of commercial motor

1 vehicles subject to sections 75-363 and 75-364. The applicant shall
2 sign the registration form to acknowledge that the applicant has
3 read the declaration and is aware that the motor carrier safety
4 regulations are part of state law. Nothing in this section shall be
5 construed to impose any liability upon any county treasurer or the
6 Department of Motor Vehicles or any employee thereof as a result of
7 any act or failure to act under this section.

8 Sec. 18. Section 75-369.01, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 75-369.01 Any officer ~~of the carrier enforcement division~~
11 of the Nebraska State Patrol carrier enforcement division ~~or any~~
12 ~~officer of the Nebraska State Patrol~~ may conduct a safety review
13 audit or safety compliance audit review of a motor carrier.

14 Sec. 19. Section 75-369.02, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 75-369.02 Following a ~~safety review or safety compliance~~
17 audit review of an intrastate motor carrier by an officer of
18 the Nebraska State Patrol ~~carrier enforcement division, of the~~
19 ~~Nebraska State Patrol or any officer of the Nebraska State Patrol,~~
20 the Nebraska State Patrol shall issue a safety rating of that
21 motor carrier. The safety rating shall be based upon factors
22 prescribed in 49 C.F.R. part 385 — Safety Fitness Procedures ~~of~~
23 ~~the federal Motor Carrier Safety Regulations~~ adopted in section
24 75-363, ~~the federal Hazardous Material Regulations~~ portions of
25 49 C.F.R. chapter I adopted in section 75-364, and insurance

1 requirements for intrastate motor carriers set forth by the Public
2 Service Commission pursuant to section 75-307. The motor carrier
3 shall be notified by the Nebraska State Patrol of such safety
4 rating by certified or registered mail.

5 Sec. 20. Section 75-369.03, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 75-369.03 The Superintendent of Law Enforcement and
8 Public Safety may issue an order imposing a civil penalty against
9 an interstate a motor carrier transporting persons or property in
10 interstate commerce for a violation of sections 75-348 to 75-358
11 or against an intrastate a motor carrier transporting persons
12 or property in intrastate commerce for a violation or violations
13 of section 75-363 or 75-364 based upon an inspection conducted
14 pursuant to section 75-366 in an amount which shall not exceed
15 five hundred dollars for any single violation in any proceeding
16 or series of related proceedings against any person, or motor
17 carrier, ~~common carrier, contract carrier, exempt carrier, or~~
18 ~~private carrier~~ as defined in 49 C.F.R. ~~part~~ 390.5 of the federal
19 ~~Motor Carrier Safety Regulations~~ as adopted in section 75-363. The
20 superintendent shall issue an order imposing a civil penalty in an
21 amount not to exceed ten thousand dollars against ~~an interstate~~
22 a motor carrier transporting persons or property in interstate
23 commerce for a violation of subsection (3) of section 60-4,162
24 based upon a conviction of such a violation. Upon the discovery of
25 any violation by ~~an interstate~~ a motor carrier transporting persons

1 or property in interstate commerce of section 75-307, 75-352,
2 75-363, or 75-364 based upon an inspection conducted pursuant to
3 section 75-366, the superintendent shall immediately refer such
4 violation to the appropriate federal agency for disposition, and
5 upon the discovery of any violation by ~~an intrastate~~ a motor
6 carrier transporting persons or property in intrastate commerce
7 of section 75-307 based upon such inspection, the superintendent
8 shall refer such violation to the Public Service Commission for
9 disposition.

10 Sec. 21. (1) A provision, a clause, a covenant, or
11 an agreement contained in, collateral to, or affecting a motor
12 carrier transportation contract that purports to indemnify, defend,
13 or hold harmless or has the effect of indemnifying, defending,
14 or holding harmless the motor carrier transportation contract's
15 promisee from or against any liability for loss or damage
16 resulting from the negligence or intentional acts or omissions
17 of the motor carrier transportation contract's promisee or any
18 agents, employees, servants, or independent contractors who are
19 directly responsible to the motor carrier transportation contract's
20 promisee, is against the public policy of this state and is
21 unenforceable.

22 (2) Nothing contained in this section affects a
23 provision, a clause, a covenant, or an agreement in which a
24 motor carrier indemnifies or holds harmless a motor carrier
25 transportation contract's promisee against liability for damages to

1 the extent that the damages were caused by and resulting from the
2 negligence of the motor carrier or its agents, employees, servants,
3 or independent contractors who are directly responsible to the
4 motor carrier.

5 (3) As used in this section:

6 (a) Motor carrier means any person who or which owns,
7 controls, manages, operates, or causes to be operated any motor
8 vehicle used to transport goods over any public highway in this
9 state, whether in intrastate or interstate commerce;

10 (b) Motor carrier transportation contract means a
11 contract, agreement, or understanding covering:

12 (i) The transportation of property for compensation or
13 hire by a motor carrier;

14 (ii) The entrance on property by a motor carrier for
15 the purpose of loading, unloading, or transporting property for
16 compensation or for hire; or

17 (iii) A service incidental to activity described in
18 subdivision (i) or (ii) of this subdivision, including, but not
19 limited to, storage of property.

20 A motor carrier transportation contract does not include
21 provisions of the Uniform Intermodal Interchange and Facilities
22 Access Agreement administered by the Intermodal Association of
23 North America or any other provision, clause, covenant, or
24 agreement providing for the interchange, use, or possession of
25 intermodal chassis, containers, or other intermodal equipment; and

1 (c) Promisee means the party to a motor carrier
2 transportation contract who or which is not a motor carrier or, if
3 the promisee is a motor carrier, is not the motor carrier actually
4 doing the transporting.

5 Sec. 22. Original sections 28-1241, 57-501, 60-4,138,
6 60-4,145, 60-4,146, 60-4,163, 60-6,251, 60-6,284, 75-368, 75-369,
7 75-369.01, 75-369.02, and 75-369.03, Reissue Revised Statutes of
8 Nebraska, section 28-1213, Revised Statutes Cumulative Supplement,
9 2004, and sections 60-462.01, 60-465, 60-1306, 75-363, and 75-364,
10 Revised Statutes Supplement, 2005, are repealed.

11 Sec. 23. The following sections are outright repealed:
12 Sections 75-381 and 75-382, Reissue Revised Statutes of Nebraska.

13 Sec. 24. Since an emergency exists, this act takes effect
14 when passed and approved according to law.